

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

TOM WHITFIELD,

Plaintiff,

Case. No. 18-11566

v.

Honorable Thomas L. Ludington
Magistrate Judge Anthony Patti

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

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**ORDER ADOPTING REPORT & RECOMMENDATION, GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT, DENYING PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT, AND AFFIRMING THE DECISION OF THE
COMMISSIONER**

Plaintiff turned 50 years of age on July 5, 2012, at which point he became a “[p]erson closely approaching advanced age.” 20 C.F.R. §§ 404.1563(d), 416.963(d). From July 2012 to August 2013, Plaintiff worked at a car wash. (R. at 161.) Plaintiff alleges his disability began on October 1, 2013, at the age of 51. (R. at 142.) In his disability report, he lists several conditions (severe osteoarthritis; high blood pressure; a collapsed artery in his left leg; an education limited to 8th Grade; and disadvantaged reading, writing and comprehension skills) as limiting his ability to work. (R. at 189.) His application was initially denied on July 13, 2016. (R. at 66-82.) Plaintiff requested a hearing by an Administrative Law Judge (“ALJ”). (R. at 87-88.) On July 11, 2017, ALJ Crystal L. White-Simmons held a hearing, at which Plaintiff and a vocational expert (VE), James Lozer, Ed.D., testified. (R. at 24-65, 218.) On August 18, 2017, ALJ White-Simmons issued a partially favorable opinion in which she determined that Plaintiff was not disabled prior to July 5, 2017, but became disabled on that date and continued to be disabled through the date of the decision. (R. at 8-23.) Plaintiff submitted a request for review of the

hearing decision/order. (R. at 135-141, 6-7.) However, on March 16, 2018, the Appeals Council denied Plaintiff's request for review. (R. at 1-5.) Thus, ALJ White-Simmons's decision became the Commissioner's final decision. Plaintiff timely commenced the instant action on May 18, 2018.

The matter was referred to Magistrate Judge Anthony Patti. ECF No. 3. The parties filed cross motions for summary judgment. ECF Nos. 15, 17. On January 31, 2019, Judge Patti issued a report, recommending that Plaintiff's motion for summary judgment be denied, that Defendant's motion for summary judgment be granted, and that the decision of the commissioner be affirmed. ECF No. 19.

Although the magistrate judge's report states that the parties to this action could object to and seek review of the recommendation within fourteen days of service of the report, neither party has filed any objections. The election not to file objections to the magistrate judge's report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). The failure to file objections to the report and recommendation waives any further right to appeal. *Id.*

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation, ECF No. 19, is **ADOPTED**.

It is further **ORDERED** that Plaintiff's Motion for Summary Judgment, ECF No. 15, is **DENIED**.

It is further **ORDERED** that Defendant's Motion for Summary Judgment, ECF No. 17, is **GRANTED**.

It is further **ORDERED** that the findings of the Commissioner are **AFFIRMED**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: August 13, 2019